

Forced Marriages/ Non-Consensual Marriages

**OCASI Professional
Development
Conference 2007**

Presenters:

May & Deepa - SALCO

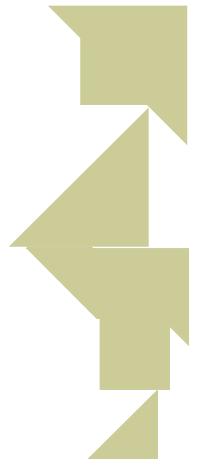
Agenda

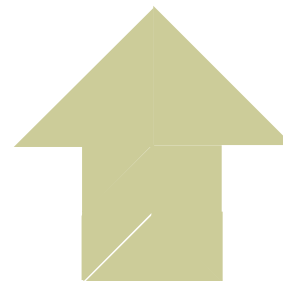
- ♦ **Ice breaker**
- ♦ **SALCO and Forced Marriages project**
- ♦ **Terms and References**
- ♦ **Case Studies**
- ♦ **Legal Models**
- ♦ **Our Approach**
- ♦ **Family law**
- ♦ **Reasons For Forced Marriage**

Agenda (Contd.)

- ◆ **Effects and Consequences of Forced Marriage**
- ◆ **Warning Signs**
- ◆ **Creating an Open Environment**
- ◆ **What to do**
- ◆ **Resource List**
- ◆ **Questions we are asking**
- ◆ **Symposium**

Ice breaker





SALCO and Forced Marriage Project

South Asian Legal Clinic Ontario

Forced Marriage Project



Terms and References

Forced marriage: is a marriage that takes place without the consent of one or both individuals, i.e. it does not entail free and full consent on the part of at least one of the parties. In a forced marriage, consent is extracted under duress including but not limited to: fraudulent inducement, violence, physical abuse and (especially in the case of minors) psychological/emotional manipulation.

Arranged vs. Forced Marriage

Forced Marriage is an issue which is often misunderstood and misrepresented. In particular there is sometimes confusion between arranged marriage and forced marriage. The distinction between arranged and forced marriage is however clear and lies in the right to choose.

(1)	(2)	(3)	(4) arranged	(5)	(6)	(7)	(8) forced
-----	-----	-----	-----------------	-----	-----	-----	------------

Case Studies

- A case of a student.
- Case of a young girl forced into a marriage overseas
- Case of a woman who wanted a divorce from a forced marriage

Legal Models in Other Jurisdictions

- ♦ **Australia:** Tough laws related to trafficking, with legal sentences of up to 25 years for people convicted of trafficking girls overseas for forced marriages.
- ♦ **Britain:** Civil remedies available. Forced marriages are not a criminal offence in and of themselves, but a Forced Marriage Unit (FMU) has been established that provides extensive guidelines for dealing with forced marriage cases for social workers, educators, police and health workers.

◆**Norway:** “In the case of forced marriage, anyone who through violence, loss of liberty, improper pressure or other unlawful conduct, or by threatening such conduct, forces another to enter into a marriage shall be punished. The punishment for forced marriage is 6 years. Aiding and abetting shall be punished in the same manner.” Section 222, subsection two, of the Norwegian Penal Code.

◆**Belgium:** Forced marriages punishable with a jail term of one month to two years or maximum fines of 500 to 2,500 euros. An attempted forced marriage is prosecutable with a jail term of 15 days to a year or a fine of 250 to 1,250 euros.

Turkey: On 1 January 2002, a new Turkish Civil Code that enshrined the equality of men and women within the family came into force.

Pakistan: In February 2007 the Prevention of Anti-women Practices Bill 2006 was tabled at the National Assembly. Section 498B would outlaw forced marriages and provide for three years in prison and a fine for the offence.

Our Approach

Whereas all individuals have fundamental human rights, including the right to safety and security;

Whereas all individuals have the right to freely choose marriage and a spouse;

Whereas children and youth require a positive environment in which to mature, and a positive relationship with their parents, in order to make healthy decisions about their lives;

and

Whereas children and youth lack the freedom to make decisions that contradict the will of their parents and are, therefore, especially vulnerable to actions that may not be in their best interest;

The Forced Marriage Project at SALCO denounces the threat of, as well as, forced, non-consensual marriage, and commits to the following:

To identify strategies to promote the safety, security, and right to freely choose marriage of all individuals, with particular attention to children and youth, in all contexts including the family, school, and faith and cultural communities

To recommend public policy options and procedural mechanisms that ensure the rights of individuals to safety, security and the freedom to choose marriage are protected.

Family Law

- ◆ A marriage procured by fraud or duress is not void for all purposes, it can only be declared so at the option of the injured party, since all authorities are to the effect that it may be ratified or reaffirmed by the injured party by the exercise of marital rights when constraints have been removed.
- ◆ To have such marriage dissolved or declared null or void is a privilege personal to the injured party, cannot be effected by the heirs of such party, or by the party in fault.

Source: Canadian Family law (Second edition) by Payne and Payne pg.33

Family Law

- ◆ From legal standpoint, the intention of the parties to contract marriage is all-important; their motive for doing so is irrelevant.

*Source: Canadian Family law (Second edition)
by Payne and Payne pg.35*

Reasons for Forced Marriages

- ◆ Reasons parents may give:

Protecting their children

Building stronger families

Preserving cultural or religious tradition



Motives identified

- ◆ Controlling unwanted behaviour and sexuality (including perceived promiscuity, homosexuality) – particularly the behaviour and sexuality of women
 - Preserving ‘family honour’
 - Responding to peer group or family pressure
 - Attempting to strengthen family links
 - Ensuring land, property, wealth remain in the family

Motives (Contd.)

- Protecting *perceived* cultural and/or religious ideals
- Preventing ‘unsuitable’ relationships, e.g. outside the ethnic, cultural, religious or caste group
- Assisting claims for residence and citizenship
- Fulfilling long-standing family commitments

Effects and Consequences of Forced Marriage

- Estrangement from family
- Increased vulnerability to domestic violence
- Unable to leave due to economic and/or family pressures
- Isolation
- Stigma
- For many that run away – this is the first experience away from home
- Underreporting due to fear of ‘shaming’ family
- Underreporting due to mistrust of authorities, reluctance to bring legal consequences to family
- Fear of retaliation for leaving the marriage
- In cases documented in the UK, parents have enlisted the assistance of other community members (e.g. taxi drivers, shopkeepers) to track down a run away
- May go to the police with false accusations to track down young person.

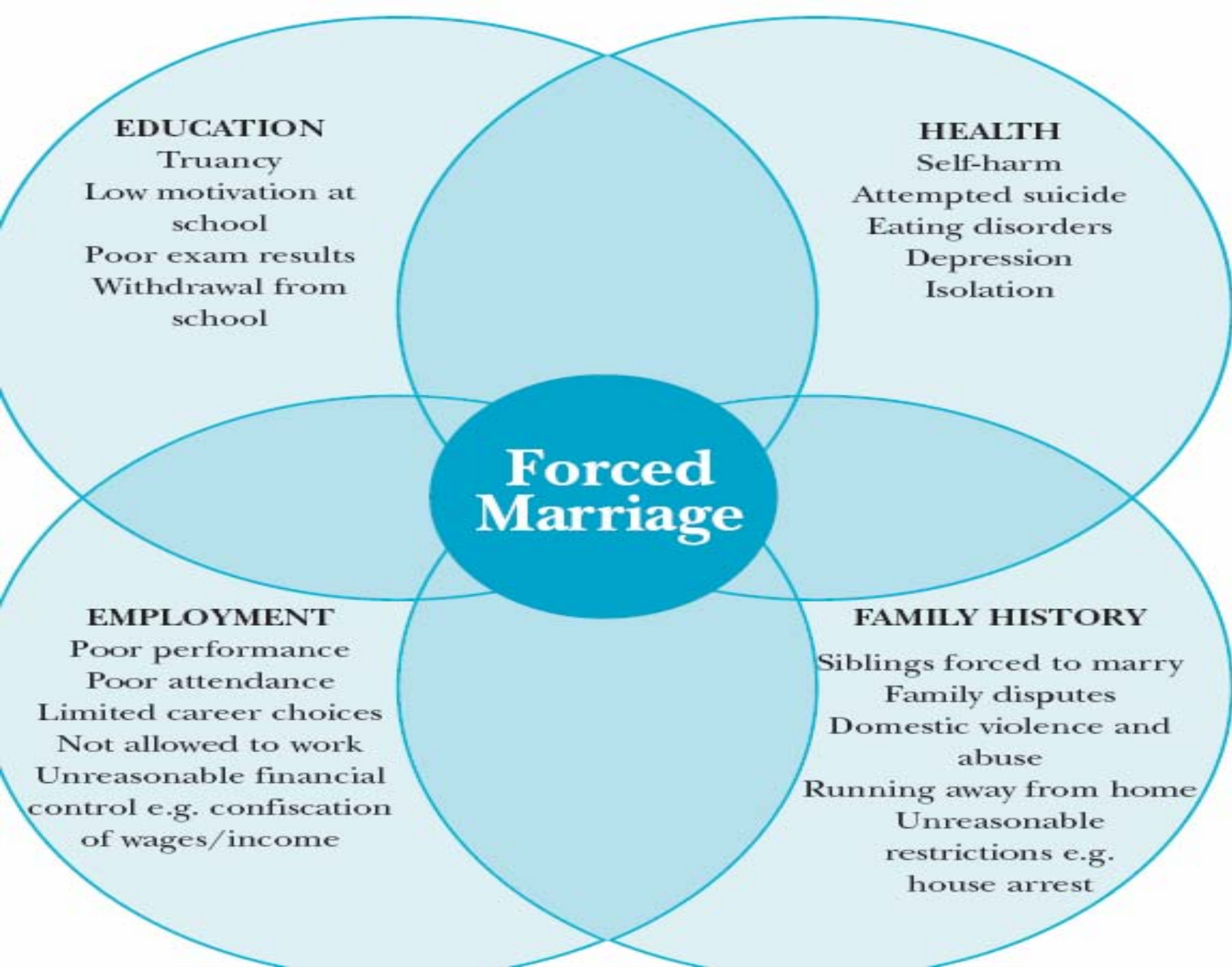
Warning Signs

- Appointments are often missed
- The person appears frightened, excessively anxious or depressed
- The person is always accompanied when attending a consultation
- Injuries are inconsistent with the explanation of the cause of accident

- The partner appears aggressive and overly dominant/the woman is passive and afraid
- Worsening academic performance
- Absence or poor attendance at school, college or work
- Depression
- Self harm
- Eating disorders
- Regular visits to the GP with no obvious illness or reason
- Attempted suicide

Forced Marriage in form of domestic violence and/or child abuse

- Physical and sexual violence
- Threatening behaviour
- Imprisonment
- Abduction
- Mental and social pressure, including emotional blackmail
- Restrictions on lifestyle such as limitations on movement, association, dress code, education and career choices
- Oppressive financial control
- Other demeaning, humiliating and controlling behaviour



Creating an open environment

- • Reassurance about confidentiality. Advise the client of your legal and professional responsibilities in this regard.
- • Listen without judgement – the client may confide in you about personal matters related to sexuality, relationships forbidden by their families, and/or other areas of their private lives. Confidentiality is of utmost importance. Reassure as many times as possible that this information will **not** be shared.
- • Making sure appointments are booked at times when client can attend in a discrete and safe way (e.g. during a school lunch hour so a young woman can attend unaccompanied and without parents' knowledge).
- • Display relevant information (e.g. related to domestic violence, sexual assault, distress lines, child abuse, women's services, women's services in ethnic/racial communities).

What to do

Personal

Respect person's wishes

- Personal safety and the level of risk
- Confidentiality
- Accurate information about rights and choices

Legal

Sexual Assault

Threatening behaviour/
threats to kill

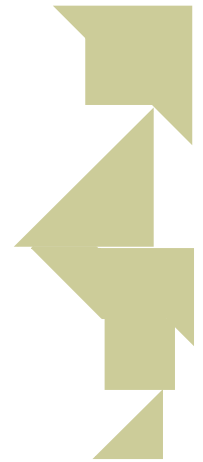
Kidnap

Abduction

Assault

Imprisonment

Murder

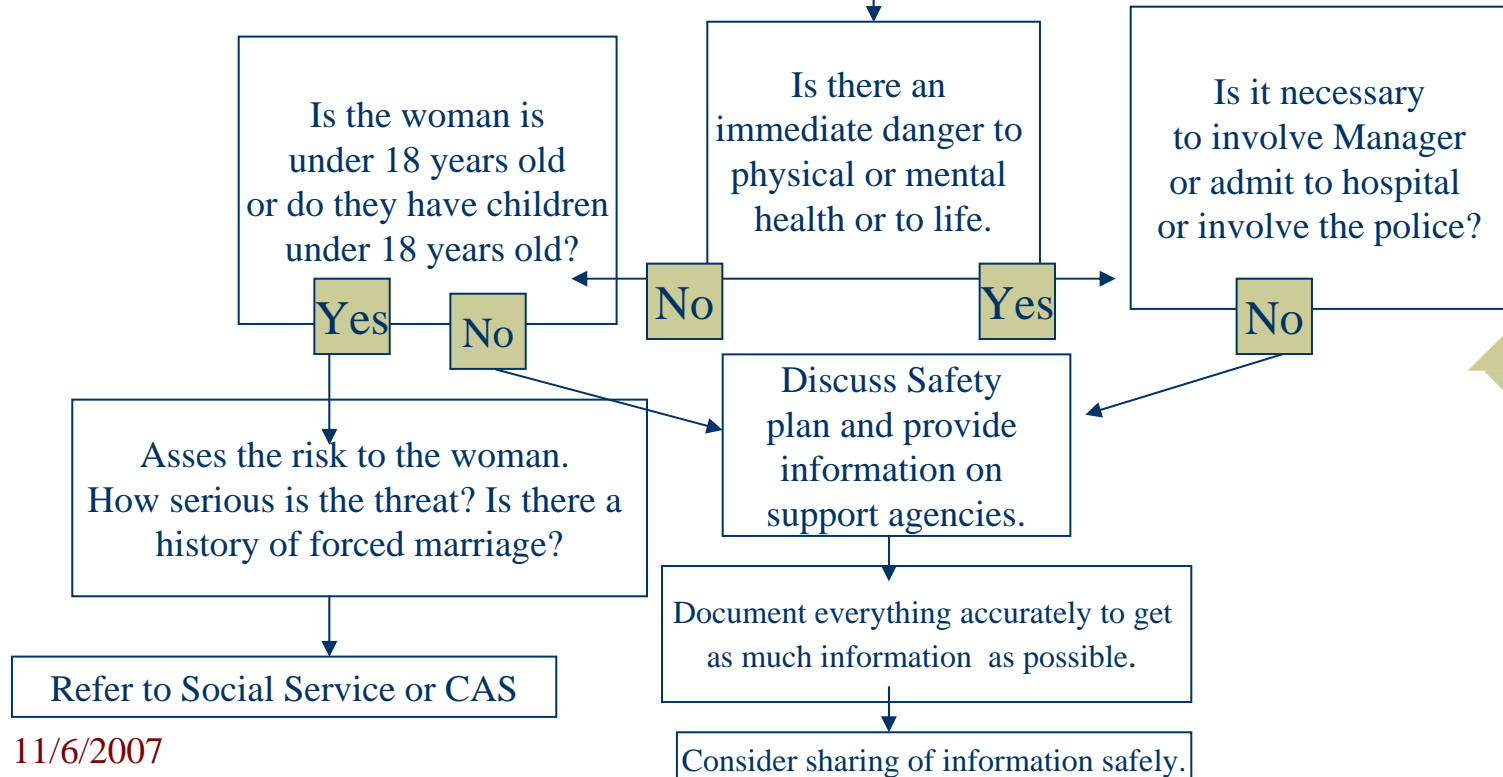


Duty to Report

Every person in Ontario is required under The Child & Family Services Act to promptly report his/her belief that a child (under 16 years of age) is or may be in need of protection. "A person who believes on reasonable grounds that a child is or may be in need of protection shall share the belief and the information upon which it is based to a society." C.F.S.A. s. 72(1).

A Woman discloses that she has been,
or is about to be, forced to marry.

Offer reassurance and support. Refer to Local and
national support groups and counseling services
with a history of dealing with case of forced marriage and
Encourage the woman to speak to a domestic abuse police officer
such as someone in the local community safety Unit even
if it is not an emergency.



Safety Considerations:

- ◆ Simply arranging a meeting between a young person and their family may put the young person under further pressure and/or at more risk.
- ◆ Keep all information confidential.
- ◆ Do not approach other family members unless the young person asks AND you are qualified to do so.
- ◆ Mediation may place you at risk as well.
- ◆ Check with your agency about any relevant policies and only conduct mediation if you are qualified and authorized by your agency

Considerations for the Immigration System

- ◆ ● If she has been forced to sponsor her spouse overseas she can withdraw sponsorship without legal assistance. Or she can be assisted by a lawyer, community legal worker (CLW) or law student at any local legal clinic to inform CIC that she wishes to withdraw her application. **She must withdraw her application before her spouse lands. Please note if she is unable to withdraw her application before he lands in Canada as a permanent resident, she will be financially liable and responsible for him for the first three years of his arrival in Canada,** i.e. if her spouse wants to obtain financial assistance (welfare) during the three initial years of his landing, she will have to pay that back to the government. If she herself needs to be on social assistance as well, the government will give her \$100 less than what she is supposed to be given. She will then only have a monthly allowance of approx. \$450.



Steps to Take

First Steps

- ◆ See the person immediately in a secure and private place
- ◆ See the person on their own – even if they attend with others
- ◆ Explain all the options to the person and recognise and respect their wishes.
- ◆ Reassure the person of social service confidentiality

First Steps (Contd.)

- ◆ Initiate a strategy discussion under child protection procedures to decide whether the young person is suffering, or at risk of, significant harm (in the case of under 16s). Refer to **Children's Aid Society** website for more guidance.
- ◆ Consider the need for immediate protection and placement away from the family where necessary

Additional Steps




- **Information from case files and database files should be kept strictly confidential and preferably be restricted to named members of staff only.**
- **Give the young person, where possible, the choice of the race and gender of the social worker who deals with their case.**
- **Inform them of their right to seek legal advice and representation.**
- **In all cases, assess the risk of harm facing the person and the staff member.**
- **Give them personal safety advice**
- **Record any injuries and arrange a medical examination. Keep detailed documentation of any injuries or history of abuse, as the police may require this for any subsequent prosecution in related legal matters.**

Additional Steps (contd.)

- Give the person advice on what service they should expect and from whom.
- Maintain a full record of the decisions made and the reason for those decisions
- Ensure that the person has the contact details for their social worker/manager.
- Try to refer the person, with their consent, to appropriate counselling services.
- Encourage the person to access an appropriate, trustworthy advocacy service that can act on their behalf

Things to Remember

- Circumstances may be more complex if the person is lesbian, gay, bisexual or transgender.
- Male victims of forced marriage may have difficulty in their situation being taken seriously.
- When referring a case of forced marriage to other organisations/agencies, ensure they are capable of handling the case appropriately.

- 
- 
- ◆ It is important to get **as much information as possible** when a case is first reported, as there may not be another opportunity for the individual reporting to make contact. The case may be reported by a third party or the person under threat.
- 

Obtain details of the person under threat including:

- Date of report
- Name of individual under threat
- Nationality
- Age
- Date and place of birth
- Passport details
- School details
- Employment details
- Full details of the allegation
- Name and address of parents.
- Obtain a list from a person under threat of all those friends and family who can be trusted.
- Establish a code word to ensure you are speaking to the right person.
- Establish a way of contacting them discreetly in the future that will not put them at risk of harm.
- Obtain any background information including schools attended, involvement by police, doctors or other health services etc.
- Record details about any threats or hostile actions against the young person, whether reported by the victim or a third party.
- Obtain a recent photograph and other identifying documents. Document any other distinguishing features such as birthmarks and tattoos etc.
- Establish the nature and level of risk to the safety of the individual (e.g. are they pregnant, do they have a secret boyfriend/girlfriend, are they self-harming, are they already secretly married).
- Establish if there are any other family members at risk of forced marriage or if there is a family history of forced marriage and abuse.

Check social services' records for past referrals of family members including siblings

What not to Do

- Send the individual away in the belief it is not your responsibility
- Approach the family or friends, unless the individual asks you to do so
- Send the individual back to their family without their permission
- Breach confidentiality
- Attempt to be a mediator
- Contact community leaders unless requested to by the individual

Planning to Leave / Exit Strategies

- ◆ Much of the advice below also pertains to persons who may not be preparing for a planned exit, but as a means of advance preparation should an emergency exit ever be required.
- ◆ When devising an exit strategy the individual should be fully consulted as to their future needs and have their wishes respected.
Safety is paramount. Avoid putting yourself or others at risk.

Devising an exist strategy.

- Open a bank account in their name
- Leave copies of important documents such as passport, National Insurance Number and birth certificate with the police or a trusted friend
- Leave spare clothing and cash etc with a trusted person
- Keep help line numbers close at hand
- Have a telephone card or change for urgent telephone calls
- Arrange alternative "emergency" accommodation should the need arise

The individual should be encouraged to think about

- Who they could go to in an emergency
- Who would be able to send them money if necessary
- The possible finality of this decision

If the individual is leaving the home

- Police officers should accompany them if they insist on returning to collect their possessions
- Consider asking a third party to collect the individuals possessions i.e. a social worker
- Refer the individual to appropriate agencies/support groups for information and assistance

Personal possessions to take may include

- Proof of identity (something with a photograph and signature i.e. passport, student ID card, photo-card driving license, and social insurance)
- Medication and medical cards
- Address book and photographs
- Marriage/ divorce papers
- Jewellery and clothing

What Can Be Done Abroad

- ◆ Forced Marriage may occur overseas.
- ◆ The person may be tricked into traveling abroad on the pretence to see a dying or sick relative or even a family holiday.
- ◆ If they find themselves in this situation, their experience may be similar to that of a hostage.
- ◆ If foreign travel is mentioned and there is a fear that this may be a means of forcing a marriage, ensure they are aware and prepared for the various difficulties they may encounter if they want to return to Canada.

The Department of Foreign Affairs and International Trade Consular Affairs website

Q: What can I do if I am forced into marriage in a foreign country?

A: There are reports of Canadian citizens being forced into marriage without prior knowledge or consent.

Forced marriages have occurred in a number of countries, such as Afghanistan, Algeria, Bangladesh, Egypt, Ethiopia, India, Libya, Morocco, Pakistan, Somalia and Sudan. Parents, relatives and communities may use relentless pressure, emotional blackmail, threats, abduction, imprisonment and physical violence to coerce people to enter into marriage. While both men and women experience forced marriage, it is most commonly perpetrated against women, who may be unable to return to Canada.

- ♦ Canada opposes the practice of forced marriage and urges all countries to respect their international human rights obligations relating to free and full consent to marriage. Forced marriage constitutes a human rights violation under international law to which Canada is a signatory.
- ♦ If you are in Canada and you believe that you are being forced to travel overseas to marry, you should contact provincial social welfare authorities and your local police. If you are already overseas, you should contact the nearest Canadian government office abroad or contact the Emergency Operations Centre at 1-800-267-6788 (in North America) or call 613-996-8885 collect (where available).

- ◆ **Q: What kind of consular assistance is available from the Government of Canada if I experience marriage-related problems abroad?**
- ◆ **A:** Consular officials can help you if you are a victim of abuse, require assistance returning to Canada, need a list of lawyers, are concerned about fair treatment under a country's laws or need assistance in a foreign country.
- ◆ **Q: If my overseas marriage does not work out or I want to end the relationship, can I get divorced? Do I have other options?**
- ◆ **A:** Only a lawyer with expertise in matrimonial law can address these concerns. The Government of Canada cannot intervene in private legal matters. However, should you need legal counsel abroad, officials at the nearest Canadian government office can provide you with a list of local lawyers.
- ◆ **Q: If I marry a foreign citizen abroad, can my spouse prevent me or my children from returning to Canada?**
- ◆ **A:** In many countries, a husband can lawfully impose travel restrictions on his wife and children, preventing their return to Canada. Local laws may also allow him to retain the woman's passport and assets, even if the couple is divorced.
- ◆

Possible difficulties they may encounter when abroad

- They may find it impossible to communicate by telephone and email
- Individuals may not have access to their passport or money
- Young women may not be able to leave the house unaccompanied
- They may not receive the support they expect from neighbours, local police, family friends or taxi drivers
- They may also find themselves subjected to violence or threats of violence
- If a person is concerned about the motives behind foreign travel, that person should be advised not to go. However sometimes foreign travel is unavoidable. Below is a list of precautions that can be taken prior to leaving.

Precautions to take should foreign travel become unavoidable

- Supply the address and contact number of the nearest Canadian Government Office in the country that is being visited. A list is available online (http://www.voyage.gc.ca/main/foreign/fordest/foreign_clientview-en.asp). The offices can help by:
- Issuing emergency passports
- Assisting with safe accommodation and transport
- Working to help the victim return to Canada
- Advise them to take emergency cash in case problems arise in the country of destination together with contact details of someone they can trust to help them
- Advise them not to drink or eat anything offered before the flight as it may be drugged. Remind them that they can always ask for help at the airport - by screaming if necessary.
- Contact the airport prior to departure as the airport authorities might be able to assist.

Questions We Are Asking

- ✓ How often is this happening in Canada?
- ✓ Who is it happening to?
- ✓ Is this an existing problem? An emerging one? Or neither?
- ✓ Are institutions equipped to handle forced marriage cases?
- ✓ Are there protocols in place to deal with such cases?
- ✓ What kind of response is appropriate? Would a legal response be one?
- ✓ What would a legal response look like?

Contact Information

Forced Marriages Project

South Asian Legal Clinic of Ontario

Contact: May El-Abdallah

may@salc.net

Phone: 416-839-3763



Acknowledgements

- Materials and permissions obtained from the UK Forced Marriage Unit. With particular thanks to: Peter Abbott, Ahlam Laabori, and Hannah Buckley
- Additional information obtained from the UK National Health Service





JUST
FORCED

TO GET
MARRIED